

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.25338 of 2018

and

WMP.No.29490 of 2018

M.Kazim Hussain

...Petitioner

Vs

The District Revenue Officer,
Kanchipuram District,
Kanchipuram.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned suspension order passed by the respondent in RC.No.A2/39192/2013 dated 09.01.2014 and quash the same and further direct the respondent to reinstate the petitioner with all consequential service and monetary benefits.

For Petitioner :Mr.S.Sivakumar
For Respondent :Mr.R.S.Selvam,
Govt.Advocate

O R D E R

The impugned order of suspension was issued in proceeding dated 09.01.2014 is under challenge in the present writ petition.

2. The writ petitioner was working as Revenue Inspector was placed under suspension on account of the fact that, he was trapped and arrested on 03.12.2013, by the Vigilance and Anti-Corruption Department for demanding a bribe amount of Rs.1500/- from one Mr.A.Ashok Kumar, S/o. Anandan and received the same by way of instructing the complainant to place the bribe in his bag. Undoubtedly, the allegations against the writ petitioner is serious in and in relation to the corrupt activities. A criminal case was registered against the writ petitioner under the provisions of the Prevention of Corruption Act.

3. The learned Government Advocate appearing on behalf of the writ petitioner states that, the criminal case is now pending before the Chief Judicial Magistrate cum Special Judge, Chengalpattu and the case was numbered as CC 2/2014 and certain witnesses were already examined and the trial is in progress. Under these Circumstances, this Court is of the considered opinion that, the case of the writ petitioner is to be reviewed periodically.

4. In the present case on hand, even the Government issued certain clarifications in letter (Ms) No.43/N/2015-3 dated 26.04.2016, for the purpose of reviewing the order of suspension and to avoid prolonged suspension. The relevant paragraph No.5 is extracted hereunder:-

"5. In view of the above settled policy of the Government for at least temporarily keeping away the corruption-charged public servants and / or the public servants charged on their moral-turpitude either on their official and / or private capacity, till they are exonerated of the grave charges, by way of keeping them under suspension from public service so as to encourage cleanliness in the effective delivery of public services to the general public, it is clarified that the instructions issued already in Govt, letter No.13519/N/2015-1 dated 23.7.2015 to the effect that the time limit of three months on suspension cases specified therein, are applicable only to the suspension cases arising out of departmental disciplinary inquiries pertaining to non-vigilance and / or any non-criminal cases, in view of the admitted fact that the gravity of the Vigilance / Criminal cases is alarmingly more, than that of the seriousness of the non-vigilance / non-criminal cases in which allegation of corruption is not dealt with."

5. The facts remains that, the writ petitioner is under continuous suspension from 09.01.2014 onwards. Thus, continuing the order of suspension now after a lapse of more than 5 years is certainly undesirable.

6. Prolonged suspension is bad in law. On initiation of disciplinary proceedings, undoubtedly an employee shall be placed under suspension by the Competent Authority. However, the authorities competent must ensure that the departmental disciplinary proceedings initiated against the employees are concluded within a reasonable period of time. In the event of an enormous delay in concluding the departmental disciplinary proceedings, then the authorities competent must review the order of suspension for its revocation. If it is not possible

for the authorities to conclude the departmental disciplinary proceedings, then the order of suspension can be revoked and the employees shall be reinstated into service and post in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against him. Contrarily, an employee cannot be kept under suspension for years together without any progress in departmental disciplinary proceedings.

7. Undoubtedly, disposal of the criminal case may take long years by the Competent Court of law. However, there is no bar for the disciplinary authorities to continue the departmental disciplinary proceedings even during the pendency of the criminal case. In other words, mere pendency of the criminal case is not a bar for the continuance of the departmental disciplinary proceedings. If the files, materials and other records are available with the authorities competent, then they are at liberty to continue the departmental disciplinary proceedings, conclude the same and pass final orders pending disposal of the criminal case.

8. If an employee after departmental disciplinary proceedings is convicted by the Competent Court of Law, then further actions shall be taken or the earlier orders shall be reviewed for issuing appropriate orders based on the conviction. There is no impediment for the authorities on initiation of fresh proceedings, if a public servant is convicted in criminal case by the competent Court of Law. Considering all these aspects, the disciplinary authorities shall continue the departmental disciplinary proceedings and pass final orders pending disposal of the criminal case. This being the legal principles settled by the Constitutional Courts, the authorities need not keep an employee under suspension for an unspecified period. Keeping an employee under suspension for long years and paying subsistence allowance for an unspecified period is causing financial loss to the State exchequer. Payment of subsistence allowance without extracting work is a financial loss to the State exchequer. Thus, the authorities must be vigilant and review the order of suspension periodically and if there is no impediment, conclude the disciplinary proceedings and pass final orders.

9. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period and accordingly the following orders are passed:

(i) The impugned order of suspension passed by the respondent in his order No. RC.No.A2/39192/2013 dated 09.01.2014 is quashed.

(ii) The respondent is directed to reinstate the petitioner in service.

(iii) The respondent is directed to post the writ petitioner in any one of the non sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner.

10. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The District Revenue Officer,
Kanchipuram District,
Kanchipuram.

+1 CC to Govt. Pleader sr 29783.

+1 CC to Mr.S.Sivakumar, Advocate sr 29282.

W.P.No. 25338 of 2018

KAN (CO)
SP (22/04/2019)

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